

**THE FAYETTE COUNTY PLANNING COMMISSION** held a **Public Meeting/Workshop** on March 18, 2010, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Conference Room, Suite 100, Fayetteville, Georgia.

**MEMBERS PRESENT:** Tim Thoms, Chairman  
Al Gilbert, Vice-Chairman  
Bill Beckwith  
Jim Graw  
Douglas Powell

**MEMBERS ABSENT:** None

**STAFF PRESENT:** Pete Frisina, Director of Planning & Zoning  
Dennis Dutton, Zoning Administrator  
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

**Welcome and Call to Order:**

Chairman Thoms called the Public Meeting/Workshop to order and introduced the Board Members and Staff.

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1. **Discussion of proposed amendments to the Fayette County Zoning Ordinance, in its entirety.** *This is part of a year plus long review of the Zoning Ordinance.*

Pete Frisina presented revised copies of Section 5-3. Principal Structure or Use as follows:

Principal Structure or Use. In all residential or agricultural-***residential*** zoning districts, no more than one (1) principal structure or use shall be located on a lot, except as otherwise provided herein. In all non-residential zoning districts, no more than one (1) principal use shall be located on a lot, except as otherwise provided herein. ***The principal use on a non-residentially zoned lot shall either be non-residential or residential but not both.***

Doug Powell clarified a non-residentially zoned lot could have more than one (1) non-residential use.

The PC concurred with the revision as written.

Pete Frisina presented copies of a definition for “Acquisition of Property for a Public Purpose” as follows:

Acquisition of Property for a Public Purpose. The acquisition of property by an entity with the power of eminent domain.

The PC concurred with the definition as written.

Pete Frisina presented the proposed amendments as follows:

- 7-3. Reconstruction of Nonconforming Structures. When a nonconforming structure ~~or a structure containing a nonconforming use is razed (see discussion below)~~ or damaged by fire, flood, wind or act of God, such structure may be reconstructed only if the cost of reconstruction totals less than ~~seventy-five (75)~~ 75 percent of the current fair market value of the structure for tax purposes. *Reconstruction costs shall include labor, materials, appliances, devices, and fixtures required for the issuance of a Certificate of Occupancy (per applicable International Residential Code and International Building Code.)* The "value of the structure" shall not include the value of any accessory building, well, septic tank or utility in determining the extent of the damage. ~~Structures which do not conform to the yard requirements herein shall also be governed by this provision.~~

Jim Graw suggested inserting "as a nonconforming structure" prior to "only if the cost." He asked if it was beneficial to the property owner since the fair market value is usually less than what the property can be sold for.

Pete Frisina replied the fair market value is established by the County tax assessor and would alleviate the County from hiring someone to assess the fair market value.

Bill Beckwith commented it would be useless to appraise a destroyed structure.

Pete Frisina remarked the section utilizes the assessed market value of the County which is used to calculate property taxes.

Chairman Thoms expressed concern about nonresidential structures and the fair market value associated with them.

Pete Frisina said no one ever goes to the County to have their structure appraised higher.

Robyn Wilson reminded the PC the whole idea is to eventually bring the structure into compliance.

The PC held a discussion regarding the use of an appraisal because an appraisal could be performed on the construction plans.

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Pete Frisina advised the County would have the most current information based on the current structure and amenities. He explained any time a building permit is issued; a copy is forwarded to the Tax Assessors Office for re-appraisal to adjust values.

Pete Frisina explained this basically implies that the structure cannot be rebuilt in a nonconforming manner unless the threshold has been met. He asked what would be the result if this were a nonconforming lot and there was no building area on the lot? He suggested creating a ZBA procedure where the ZBA could authorize the replacement of a structure, but in a manner that meets the intent of the ordinance to the greatest degree possible.

Pete Frisina explained “razed” means level; tear down so as to make flat with the ground; to demolish; to level to the ground; the event of a structure being completely demolished and leveled. He remarked razed would imply that a structure was intentionally torn down and the foundation removed, as opposed to being destroyed or damaged by an Act of God. He confirmed a nonconforming structure which is razed should not be allowed to be rebuilt in a nonconforming manner. He suggested deleting “razed.” He asked what would be the result if this were a nonconforming lot and there was no building area on the lot? He added the limits, as to the maintenance or repair of a nonconforming structure, needs to be addressed. He confirmed the limit could be the 75% replacement cost.

The PC concurred with the proposed amendment.

**Maintenance or Repair of Nonconforming Structures. The normal maintenance and repair of a non-conforming structure, as is required to keep it in a safe and sound condition, may be made. However, if the structure falls into a state of disrepair where the cost of the maintenance and/or repair is 75 percent or greater of the current fair market value of the structure for tax purposes, the structure must be removed and/or brought into compliance. Reconstruction costs shall include labor, materials, appliances, devices, and fixtures required for the issuance of a Certificate of Occupancy (per applicable International Residential Code and International Building Code.)**

Pete Frisina asked what would be the result if this were a nonconforming lot and there was no building area on the lot? He suggested creating a ZBA procedure where the ZBA could authorize the replacement of structure, but in a manner that meets the intent of the ordinance to the greatest degree possible.

Al Gilbert stated this provision should cover items beyond the homeowner’s control.

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Robyn Wilson asked about termites because there was a structure which was completely torn down to the slab because of the extensive damage from termites.

Pete Frisina replied that termites are somewhat preventable.

The PC concurred with the proposed amendment for maintenance or repair.

- 7-4. Changes in Zoning. Any nonconformances produced by a change in zoning district boundaries *initiated by the County* or Ordinance regulations after the date of passage of this Ordinance shall also be governed by the provisions of ~~Section 7-2~~ *Article VII*.

Pete Frisina explained this section has two (2) parts: 1) a change in zoning district boundaries and 2) change in the ordinance. He said, in his opinion, this was to cover changes in zoning initiated by the County as opposed to a rezoning initiated by a property owner, although there is a provision of creating a nonconforming structure by rezoning.

The PC concurred with the proposed amendment.

- 7-5. Illegal Nonconforming Uses. Notwithstanding any other provisions herein to the contrary, as to nonconforming uses which were illegal when they were commenced, or which became illegal thereafter prior to the adoption of this Ordinance *(November 13, 1980), or amendment hereto,* this section shall be deemed to impose additional regulations only. It shall not be held or construed to be permissive of such illegal use nor as recognizing any right to the continuance of an illegal use, except in those instances where the illegal use was rendered conforming by the inclusion of the land whereon such use was conducted within a zoning district wherein such use is permitted as shown upon the Zoning Map of Fayette County.

Pete Frisina commented this was probably more useful when the new Zoning Ordinance was adopted in 1980. He remarked it would difficult some 40 years later to determine that a nonconforming use that has been in existence since 1980 was illegal prior to then. He commented if it has existed, with our knowledge since the 1970's, it would be grandfathered. He added in the 1970's the Zoning Ordinance was declared unconstitutional and all the zoning was null and void.

The PC concurred with the proposed amendment.

## ARTICLE IX. ZONING BOARD OF APPEALS

- B. Request for a Variance. The Board may authorize, upon appeal in specific cases, a variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. However, a variance shall not be granted for a use of land, building, or structure that is prohibited in the zoning district at issue except as otherwise provided herein. A variance may be granted in an individual case upon a finding by the Board that the following exists:

Pete Frisina stated “except as otherwise provided herein” was added because a nonconforming use may be re-established or a similar nonconforming use may be established by the ZBA. He pointed out we were also going to add that a variance cannot be granted for a reduction in lot size, lot width, road frontage, or any requirements of a Conditional Use, which has been the policy, but never written into the ordinance.

The PC concurred.

Robyn Wilson advised not allowing a variance for a Conditional Use would also need to be added to Section 7-1.

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
2. The application of these regulations to this particular piece of property would create a practical difficulty or unnecessary hardship; and
3. Such conditions are peculiar to the particular piece of property involved; and
4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations; provided, however, no variance may be granted for a use of land, building, or structure that is prohibited herein; and
5. A literal interpretation of this Ordinance would deprive the applicant of any rights that others in the same zoning district are allowed; and

6. Provided that the Board may impose or require such additional restrictions and standards as may be necessary to protect the health and safety of workers and residents in the community, and to protect the value and use of property in the general neighborhoods; and provided that wherever the Board shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions, or restrictions upon which such permit was granted are not being complied with, said Board shall rescind and revoke such permit after giving due notice to all parties concerned and granting full opportunity for a hearing. In exercising the above powers, the Board shall not consider any nonconforming use of neighboring lands, structures or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts as grounds for the issuance of a variance.

- C. Request for Change of the Nonconforming Use of a Structure. The Board may authorize, upon appeal in specific cases, a change in the nonconforming use of a structure in accordance with the provisions of ~~Section 7-2.C~~ herein.

Pete Frisina explained “herein” would include applicable portions of the entire ordinance.

The PC concurred.

- D. Request for Extension or Enlargement of the Nonconforming Use of a Structure. The Board may authorize upon appeal in specific cases an extension of an existing nonconforming use which the Board is specifically authorized to pass on under the terms herein. Said extensions may be granted in an individual case upon a finding by the Board that:
  1. The use is a nonconformance as defined in these regulations;
  2. The use is in full compliance with all requirements of these regulations applicable to nonconformances; and
  3. The extension of said use will not further injure a permitted use on adjacent property in the same zoning district.

Doug Powell asked for an example of an extension or enlargement of the nonconforming use of a structure.

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Pete Frisina explained if there was a nonresidential structure containing five (5) suites and in one (1) of the suites contained a nonconforming use and you wanted to expand the use into the next suite, this would be an extension or enlargement of the nonconforming use of a structure and would require ZBA approval. He added there is also a provision for the re-establishment of a nonconforming use.

Pete Frisina explained this section needs to be better coordinated with Article VII. He confirmed this has been used inappropriately to enlarge nonconforming structures, especially churches. He confirmed the new nonconforming structure section should address this problem.

Pete Frisina suggested adding “legal nonconformance” throughout the ordinance.

The PC concurred.

Pete Frisina pointed out an enlargement or expansion of a nonconforming structure needs to be addressed with limits of development established and also criteria for the ZBA to consider such a request.

- E. Continuance of Nonconformance-a Nonconforming Use. The Board may allow a ~~nonconformance~~ nonconforming use to be re-established after discontinuance for six (6) consecutive months where it is deemed by the Board that:
1. The design, construction, and character of the land, building, or structure is not suitable for uses permitted in the zoning district in which the ~~nonconformance~~ nonconforming use is situated; and
  2. Undue hardship to the property owner would result in not allowing the continuance of a ~~nonconformance~~ nonconforming use; and
  3. Adjacent property would not be unduly damaged by such continuance; and
  4. The use is to be identical to the prior ~~nonconformance~~ nonconforming use.

Pete Frisina reiterated that “legal nonconformance” would be added throughout the ordinance.

## **ARTICLE XI. POLICIES AND STANDARDS GOVERNING AMENDMENT**

- C. Individual lots, parcels or tracts affected by proposed rezonings which are initiated by a party other than the Board of Commissioners of Fayette County shall each be of

sufficient size and shape to meet all requirements of this Ordinance. Combination or division of lots, in accordance with County regulations, shall be accomplished as a condition of approval prior to the approval of any permits or applications.

Pete Frisina explained, in practice, we have told a property they couldn't rezone if they didn't have the minimum lot size, let them rezone if they had the required lot size, but were reduced by a public taking, or let them rezone if they were a nonconforming lot of record.

**Special Consideration for the Rezoning of Legal Nonconforming Lots. Any lot which is legally nonconforming may be considered for rezoning to another zoning district where the lot would be made nonconforming by said rezoning.**

Pete Frisina explained a legal nonconforming lot could not be rezoned if there is not an opportunity to combine it with additional property to make it conform to the dimensional requirements of a new zoning district. He said this could force a property to remain residential where adjacent lots could be nonresidential. He commented criteria could be established to address situations such as: a residential lot adjacent to lots on either side which are, or could be rezoned (land use) to nonresidential zoning.

Pete Frisina presented the following scenarios:

- a nonconforming lot with nonconforming structures – structures would be allowed to remain and be used – any additional structures would need to meet the dimensional requirements
- a nonconforming lot without structures – structures would need to meet dimensional requirements or a variance would be required (ZBA)
- a nonconforming residential lot could rezone to another residential zoning district where it would still be nonconforming but the setbacks would be reduced (example A-R to R-40)

Robyn Wilson said she and Pete Frisina had discussed the following scenario: She said what does not make any sense is allowing a lot, which has been reduced in size due to dedication of right-of-way, to rezone while the adjacent nonconforming lot of record, under the minimum acreage, not to rezone because at the end of the day, you still have two (2) lots less than the minimum lot size.

Pete Frisina asked if the phrase “meet all requirements of this ordinance” includes setbacks?

Robyn Wilson asked if the phrase included the buffers, if applicable.

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Pete Frisina suggested to address this during the rezoning process by establishing a certain



percentage of encroachment in the setback, but shall be in full compliance with the buffers, if applicable.

The PC concurred.

- D. A property which is improved with existing structures and which would become nonconforming within the zoning district for which the rezoning is sought may be considered for rezoning; however, the concept plan ~~must~~ shall illustrate an attempt by the applicant to meet, to the extent possible, all requirements herein, ~~and no subsequent use may be approved which would further a deficiency of required on-site parking.~~ Any new construction or improvements, including expansion of any existing structure, shall comply with the minimum requirements herein ~~and shall not be approved unless the parking requirements for the entire property can be met.~~

Pete Frisina explained this allows the creation of a nonconforming structure when property is rezoned. He asked if this is in conflict with the phrase above? He confirmed any additional improvements must meet current regulations. He noted the present procedure as follows: We have not been in the practice of allowing this, except in the O-I and Overlay Districts. We have, in fact, conditioned some rezoning applications requiring upgrades to structures to meet the minimum square footage or to be removed when the property is developed. He said the question is: Do we want to continue to create nonconforming structures across the board for any rezoning?

Chairman Thoms asked the PC if they would like to see more on C. and D.

Jim Graw stated he was preferred the establishment of a percentage of the setback with no encroachment into the buffer.

Chairman Thoms requested Staff to provide examples at the next Public Meeting/Workshop.

#### **Article VI – O-I Zoning District**

8. Use of Existing Structure: When property containing a lawfully existing building and accessory structures is rezoned to O-I for use of the existing buildings, the following shall apply:
- a. The dimensional requirements shall be reduced to the extent of, but only at the location of, any encroachment by existing structures. Any

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new construction or improvements, including expansion of any existing structure, shall comply with the dimensional requirements

herein.

- b. In the event that a structure which existed at the time of rezoning is removed, demolished or destroyed, any new structure ~~must~~ **shall** comply with the provisions of this district.

Pete Frisina explained this allows the creation of a nonconforming structure when property is rezoned to O-I. He noted any additional improvements must meet current regulations. He remarked this is usually used in office zoning where it is common to allow a residence to convert to an office use, as an office use is considered a use of moderate intensity. He said it is basically more intense than residential but less intense than nonresidential. He commented, in terms of b., how does that relate to 7-3 which allows reconstruction of a nonconforming structure?

#### **Article VII in SR 54, General State Route, and SR85 North**

- 6. Use of Existing Structure: When property containing a lawfully existing building and accessory structures is rezoned to O-I or Commercial, to use the existing buildings, the following requirements shall apply:
  - a. The setback requirements on the existing lot shall be reduced to the extent of any encroachment by existing structures. Any new construction shall comply with the setback requirements herein. (Amended 03/22/07)
  - b. All additions to existing structures shall not encroach upon the setback to a greater extent than the existing building line. (Amended 03/22/07)

Pete Frisina suggested deleting “Commercial” from the overlays stated above.

The PC concurred.

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Chairman Thoms asked if there was any further business.

Pete Frisina advised that these items would be discussed at the next Public Meeting/Workshop, including cemeteries.

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Jim Graw and Doug Powell stated they would be absent from the April 1, 2010, Public Hearing and Public Meeting/Workshop.

Robyn Wilson advised there may be a Preliminary Plat, which had previously been approved by the PC but has expired, on the April Public Hearing Agenda.

Pete Frisina advised the April 15, 2010, Public Meeting/Workshop will probably be reserved for telecommunication towers.

Hearing no further business, Bill Beckwith made a motion to adjourn the Public Meeting/Workshop. Al Gilbert seconded the motion. The motion unanimously passed 5-0. The Public Meeting/Workshop adjourned at 9:20 P.M.

**PLANNING COMMISSION  
OF  
FAYETTE COUNTY**

**ATTEST:**

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**TIM THOMS  
CHAIRMAN**

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**ROBYN S. WILSON  
P.C. SECRETARY**